

# Memorandum

**Date :** March 24, 2000  
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**To :** Robert A. Laurie, Commissioner and Presiding Member  
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**File:** Revised.Doc

**From :** **California Energy Commission** - Richard K. Buell  
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**Subject :** **STAFF PROPOSED ALTERNATIVE SOIL & WATER RESOURCES CONDITIONS**

In staff's February 10, 2000 testimony, we proposed two new Soil & Water Resources conditions of certification to limit the potential of the High Desert Power Project (HDPP) to result in growth inducing impacts {i.e., SOIL&WATER-7 and 17 4)}. Based on the evidence presented at the February 18, 2000 hearing in Victorville, staff believes that the requirements stated in these conditions could be modified to better reflect the record. Restating the conditions also clarifies the responsibilities of the project owner and Victory Valley Water District (VVWD) for ownership and control of the various project facilities.

On March 16, 2000, staff circulated proposed changes to Soil & Water Conditions of Certification 7 and 17 4), and asked parties to provide comments on staff's proposed changes. The attached contains staff's response to comments received, staff's explanation of why its proposed changes represent clarification of the conditions based on the record, and the revised conditions.

If you have any questions, please call me at (916) 653-1614 or email me at rbuell@energy.state.ca.us.

RKB:rkb

cc: High Desert POS list (97-AFC-1)

## **INTRODUCTION**

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On March 16, 2000, staff circulated proposed changes to Soil & Water Conditions of Certification 7 and 17 4), and asked parties to provide comments on staff's proposed changes. On March 20, 2000, staff received comments via email from Mr. Gary Ledford and from Mr. Steve Adams, representing the California Department of Fish and Game (CDFG). This submittal contains staff's response to those comments, and provides a further explanation of why staff believes its proposed changes represent clarification of the conditions and are based on evidence already contained in the record.

## **CONDITION OF CERTIFICATION SOIL&WATER-7**

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Staff stated in its testimony that that VVWD's use of HDPP wells to supply domestic needs after project closure during years 1 through 30 has a low probability of resulting in growth inducing impacts.<sup>1</sup> Staff stated at the hearing that if the project were to close during this period, it would likely be because of the unavailability of State Water Project (SWP) water. The unavailability of SWP water would not only affect the viability of the HDPP, it would also limit the growth potential in the Victorville area. (Tr. 2/18/00, p. 193, 197, and 198; staff; Buell) In his comments, Mr. Ledford asked "if we only have a limited supply of water, where is the water coming from to cure the overdraft and provide for growth." Mr. Ledford's question illustrates staff's point precisely; if the HDPP fails due to lack of SWP water, then SWP water would not be available to any party to support growth. Such reductions in water availability would also tend to increase water prices, which would also limit growth in the area.

Because the conditions that are likely to lead to the project's failure will also contribute to less water being available and higher water rates, staff concludes that growth inducing impacts associated with VVWD's use of HDPP wells after closure are too speculative to warrant excluding VVWD's ownership of the wells. Both Mr. Ledford and CDFG disagree with this point. However, staff believes in retrospect that its proposed condition excluding Victor Valley Water District's (VVWD) ownership of project wells is unnecessary to ensure that a growth inducing impact will not occur. CDFG also proposed adding language to Soil&Water-7 requiring the applicant to retain operational control of the water treatment facility. Staff agrees that this is a reasonable addition. Staff believes that the existing record is sufficient to support the changes to the conditions of certification provided below.

## **CONDITION OF CERTIFICATION SOIL&WATER-17 4)**

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VVWD witness Mr. Randy Hill identified that VVWD's use of the water treatment facility would be for recharge (Tr. 2/18/00, p. 158; VVWD; Hill). HDPP witness Mr.

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<sup>1</sup> Staff's February 10, 2000 testimony, Table 1, row 4 column 4, states that "If SWP water is not available, probability of growth inducing impacts is lower since water rates in area could rise."

Andrew Welch also testified that the VVWD's use of the treatment facility would be for recharge (Tr. 2/18/00, p. 101; HDPP; Welch). Mr. Hill also concluded that such recharge would be to the benefit of the community. (Tr. 2/18/00, p. 150, 153, and 154; VVWD; Hill) Staff agrees that VVWD's use of the water treatment facility to inject water into the regional aquifer for recharge of the regional aquifer or to bank water as a contingency to mitigate future drought conditions could create a benefit to the local community and to the environment. (Tr. 2/18/00, p. 200; staff; Buell)

The Energy Commission's evaluation of the HDPP water plan clearly does not address any additional groundwater banking by VVWD, and therefore, the Energy Commission can't approve any such banking as part of its decision on the HDPP. Groundwater banking will require a storage agreement between the Watermaster and VVWD. In order to approve the storage agreement, the lead agency will need to assess the environmental consequences of such banking pursuant to Mojave Water Agency (MWA) Ordinance 9 and the California Environmental Quality Act (CEQA). (Tr. 2/18/00, 200 and 201; staff; Buell) Because VVWD has not identified a specific banking proposal and such a proposal is not part of the project, staff has not evaluated it and it can't be permitted in the decision for the HDPP.

Mr. Ledford states "the evidence from both of these Agencies (VVWD & MWA) in this case is that they intend to use the PMPD for their CEQA Equivalent. Of course staff could provide a condition stating that neither VVWD nor MWA can use the PMPD as the CEQA equivalent." Staff believes that MWA should use the PMPD as the CEQA document for approval of water banking for use by the HDPP, since our analysis addresses the environmental consequences as part of the project. We agree with Mr. Ledford that the PMPD should not be used by VVWD or MWA as the CEQA document for additional banking of water by VVWD for use by VVWD. However, we do not believe a condition of certification is the appropriate way to address this issue because such a banking proposal is not before us and because we do not have jurisdiction over MWA's future actions. But we do strongly recommend that PMPD explicitly identify that use of project facilities to supply water for the HDPP are the only uses addressed by the PMPD, and that storage by VVWD for subsequent withdrawal and use by VVWD is not addressed by the PMPD.

Furthermore, staff does not believe that the Energy Commission's decision should foreclose the possibility of VVWD's use of the water treatment facility for treating SWP water prior to groundwater banking. That is a separate project and should VVWD choose to go forward with such a proposal, the lead agency that approves the banking proposal must consider a new CEQA analysis that explicitly addresses these uses prior to approval.

Mr. Ledford also asks "How can limited [water] supply be equitably achieved on a regional basis?" and "What happens if per chance Victorville captures all of the water entitlement and there is nothing left for the other communities to grow on." Staff believes that the issue of how water should be allocated in the Mojave Desert is beyond the scope of the Energy Commission's authority. Staff believes that the appropriate forum for addressing issues regarding VVWD's use of SWP water for storage or other purposes is the MWA and/or Watermaster, and not the Energy

Commission. The project before the Energy Commission is not the equitable distribution of a limited water supply or water plan that ensures community growth; it is a powerplant that will be subject to water allocation rules established by MWA. It is therefore appropriate for the Energy Commission to exclude these broader issues from its decision.

CDFG commented on Soil&Water-17 4) that "The restrictions on use of the treatment plant should be written as direct requirements of HDPP and not as required provisions for the water storage agreement between VVWD and HDPP." Staff agrees with the intent of CDFG's comment; however, staff notes that since VVWD will own the wells, the only way to enforce conditions regarding operation of the wells is through the Aquifer Storage Agreement. However, staff has deleted the references to the water treatment facilities in Soil&Water-17 and added them to a new condition Soil&Water-19.

CDFG also commented on Soil&Water-17 4) (now Soil&Water-19) that the conditions should be clarified that HDPP retains ownership and operational control of the water treatment facility. Staff believes its new condition Soil&Water-19 provides that clarification.

CDFG commented that any storage or withdrawn from a bank established for VVWD should not be included in the baseline described in Soil&Water-17 1). Staff agrees and has incorporated that amendment in Soil&Water-19.

CDFG recommended that the revised Soil&Water-17 4) be changed to require a provision be incorporated into the HDPP-VVWD agreement to ensure that any water VVWD injects through project wells must be withdrawn from either the project wells or wells that are not described in Soil&Water-17 1)c. Staff believes the issue of which wells VVWD can withdraw stored water should be addressed in the water storage agreement between VVWD and the Watermaster, and not in the Energy Commission approval.

The following revisions to staff's Soil & Water Resources conditions of certification are proposed to address the points above. We believe that these changes are supported by the evidence already placed in the record. If these are adopted, staff believes that the project will not result in any significant growth inducing environmental impacts and will conform with applicable regulations.

## REVISED CONDITIONS OF CERTIFICATION

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**SOIL&WATER-7** The project owner shall retain ownership and operational control of all project facilities, including the water pipeline, the project wells, and the water treatment facility. ~~The project owner may enter into a contract allowing operational control by the Victor Valley Water District, providing that the contract contains the provisions identified in SOIL&WATER-18.~~

**Verification:** Should the project owner choose to transfer ownership or operational control of the water treatment facility~~sell facilities~~, it must apply for an amendment to the Energy Commission Decision, and include an evaluation of any environmental effects associated with the transfer of ownership or operational control to another entity.

**SOIL&WATER-17** The project owner shall enter into an Aquifer Storage and Recovery Agreement with the Victor Valley Water District (VVWD). This agreement shall contain the following conditions:

- 1) It shall prohibit VVWD from producing or allowing others to produce water from project wells, except that VVWD may produce water from project wells:  
(i) for use by the HDPP project pursuant to SOIL&WATER-1; and (ii) for purposes other than use by the HDPP project pursuant to SOIL&WATER-1 provided that such production, in combination with production from the VVWD wells identified in "c" below does not exceed the amount identified as "the baseline", as defined in "a" below.
  - a. The contract shall define the baseline as the average aggregated annual production of the wells identified in "c" during the immediately preceding five years. The contract shall state that any water produced by VVWD pursuant to (ii) above shall be included in subsequent calculations of the baseline only if that production does not exceed the baseline for the calendar year in which the production occurs, as required by this condition.
  - b. The contract shall require VVWD to establish the first baseline using the five calendar years preceding the operation of the project wells, and shall re-calculate the baseline on a calendar year basis by January 15 of each year.
  - c. The contract shall state that "wells identified in "c" means VVWD wells that are located in a corridor two to two and one half miles wide adjacent to and west of the river's western bank including all wells within the following land sections:
    - Within Township 6 North, Range 4 West, sections 31, 32, 33, and 34.
    - Within Township 5 North, Range 4 West, sections 4, 5, the east ½ of 8, 9, 10, 15, 16, the east ½ of 21, 22, 23, 25, 26, 27, the east ½ of 28, the east ½ of 33, 34, 35, and 36.

2) It shall state that the project owner shall provide to the CEC CPM and CDFG on a quarterly basis a monthly accounting of 1) all water pumped from project wells that is supplied to the project owner, and 2) water pumped from project wells that is supplied to VVWD.

3) It shall state that VVWD shall provide to the CEC CPM and CDFG a baseline calculation no later than January 15 of each year.

~~4) The contract shall prohibit VVWD from using the water treatment facility except in emergency circumstances. In no event, shall VVWD use of the treatment facility exceed fourteen days in any calendar year, unless the Energy Commission has approved an amendment to the project decision allowing such use.~~

~~5)4)~~ The contract may include terms that require VVWD to compensate HDPP for any costs associated with subtractions from the amount of banked groundwater available to HDPP under the terms of SOIL&WATER-5(c).

**Verification:** The project owner shall provide to the CEC CPM and CDFG a copy of a signed Aquifer Storage and Recovery Agreement with the terms described above prior to certification of the project. -Any amendments to this agreement shall be approved by the CEC CPM 30 days prior to the effective date of the amendment.

**Soil&Water-19** The project owner shall limit any use of water treatment facilities by VVWD, for purposes other than providing water to the HDPP, to treating SWP water for injection into the regional aquifer. The project owner shall not allow VVWD to use the water treatment facility for treatment of water that is injected and then recovered by VVWD unless the Watermaster and VVWD have entered into a water storage agreement, and for which the appropriate lead agency has completed a CEQA review of the agreement as required by MWA Ordinance 9. Any water injected by VVWD shall not increase the baseline pursuant to SOIL&WATER-17 1). The project owner shall not enter into any contract or amend any existing contract to allow VVWD to use the water treatment facility for domestic purposes, unless the Energy Commission has approved an amendment to the project decision allowing such use.

**Verification:** The project owner shall provide to the CEC CPM and CDFG a copy of any water storage agreement between the Watermaster and VVWD within thirty days of its execution which incorporates these restrictions.